

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
Bridging the Digital Divide for Low-Income Consumers)	WC Docket No. 17-287
)	
Lifeline and Link Up Reform and Modernization)	WC Docket No. 11-42
)	
Telecommunications Carriers Eligible for Universal Service Support)	WC Docket No. 09-197
)	

**REPLY COMMENTS OF THE
NATIONAL HISPANIC MEDIA COALITION**

The National Hispanic Media Coalition (“NHMC”) respectfully submits these reply comments in response to the Federal Communications Commission’s (“FCC” or “Commission”) Fourth Report and Order, Order on Reconsideration, Memorandum Opinion and Order, Notice of Proposed Rulemaking, and Notice of Inquiry.¹ There is an overwhelming consensus that the proposals to fundamentally alter the purpose and scope of the Lifeline program under the pretext of stimulating investment for networks would hurt poor and marginalized communities. NHMC reasserts its recommendation for the Commission to abandon its proposals set forth in the Notice of Proposed Rulemaking² and Notice of Inquiry,³ and focus its efforts on implementing the 2016

¹ See *Bridging the Digital Divide for Low-Income Consumers; Lifeline and Link Up Reform and Modernization; Telecommunications Carriers Eligible for Universal Service Support*, WC Docket Nos. 17-287, 11-42, 09-197, Fourth Report and Order, Order on Reconsideration, Memorandum Opinion and Order, Notice of Proposed Rulemaking, and Notice of Inquiry, FCC 17-155 (Dec. 1, 2017).

² See *Bridging the Digital Divide for Low-Income Consumers et al.*, WC Docket No. 17-287 et al., Notice of Proposed Rulemaking, FCC 17-155 (Dec. 1, 2017) (*Lifeline NPRM*).

³ See *Bridging the Digital Divide for Low-Income Consumers et al.*, WC Docket No. 17-287 et al., Notice of Inquiry, FCC 17-155 (Dec. 1, 2017).

*Lifeline Modernization Order*⁴ to ensure that poor, marginalized, and vulnerable populations are connected to vital communications services.

In its initial comments, NHMC focused on opposing the Commission's proposals that would disproportionately impact marginalized communities. NHMC noted that the Commission's proposals would discontinue Lifeline support for non-facilities based providers, cutting off service for over 70 percent of current subscribers; ration support by imposing a self-enforcing budget cap; force low-income individuals to make a choice between vital communications services or putting food on the table by requiring a co-pay; and cut off service for residents in Puerto Rico and in the U.S. Virgin Islands still reeling from the aftermath of the devastating 2017 hurricane season. The majority of the commenters agree that, if adopted, these proposals would gut and destabilize the Lifeline program leading to an unprecedented disruption of communications services among our most vulnerable communities.

I. REMOVING NON-FACILITIES BASED PROVIDERS FROM THE LIFELINE PROGRAM AND REVOKING THE LIFELINE BROADBAND PROVIDER DESIGNATION PROCESS WOULD HARM LIFELINE SUBSCRIBERS

The overwhelming majority of commenters agree with NHMC that the Commission's proposal to eliminate non-facilities based providers from Lifeline would have a profound and immediate impact on the stability of the program, curtailing its ability to provide vital communications services. Non-facilities based providers serve Lifeline subscribers in all 50 states, Tribal lands, Puerto Rico, and the U.S. Virgin Islands. Eliminating those providers from the program would cut service for over 70 percent of current Lifeline subscribers who may not have an alternative provider, exacerbating and widening the digital divide.

⁴ See *Lifeline and Link Up Reform and Modernization et al.*, WC Docket No. 11-42 et al., Third Report and Order, Further Report and Order, and Order on Reconsideration, 31 FCC Rcd 3962 (2016) (*2016 Lifeline Modernization Order*).

Moreover, public interest groups,⁵ civil rights organizations,⁶ consumer advocates,⁷ communications workers,⁸ LGBT advocates,⁹ digital inclusion advocates,¹⁰ health services providers,¹¹ conservative groups,¹² cities,¹³ state regulatory commissions,¹⁴ veterans advocate

⁵ See Benton Foundation Comments, WC Docket No. 17-287 et al., at 9 (Feb. 21, 2018); Black Women's Roundtable Comments, WC Docket No. 17-287 et al., at 3 (Feb. 21, 2018); Free Press Comments, WC Docket No. 17-287 et al., at 20 (Feb. 21, 2018) (Free Press Comments).

⁶ See Asian Americans Advancing Justice Comments et al., WC Docket No. 17-287 et al., at 4 (Feb. 21, 2018) (AAJC Comments); Leadership Conference on Civil & Human Rights Comments, WC Docket No. 17-287 et al., at 2 (Feb. 21, 2018); Multicultural Media, Telecom and Internet Council Comments et al., WC Docket No. 17-287 et al., at 6-7 (Feb. 21, 2018) (MMTC Comments); NAACP Comments, WC Docket No. 17-287 et al., at 2 (Feb. 21, 2018) (NAACP Comments); Rainbow PUSH Coalition Comments, WC Docket No. 17-287 et al., at 3 (Feb. 21, 2018) (Rainbow PUSH Comments).

⁷ See Consumer Action Comments, WC Docket No. 17-287 et al., at 2 (Jan. 24, 2018) (Consumer Action Comments); National Consumer Law Center Comments et al., WC Docket No. 17-287 et al., at 6 (Feb. 21, 2018) (NCLC Comments); Pennsylvania's Low Income Individuals, Service Providers, Organizations, and Consumer Rights Groups Joint Comments, WC Docket No. 17-287 et al., at 1 (Jan. 24, 2018) (Pennsylvania Comments).

⁸ See Communications Workers of America Comments, WC Docket No. 17-287 et al., at 4 (Feb. 21, 2018) (CWA Comments).

⁹ See LGBT Technology Partnership Comments, WC Docket No. 17-287 et al., at 4 (Jan. 24, 2018).

¹⁰ See National Digital Inclusion Alliance Comments, WC Docket No. 17-287 et al., at 4 (Feb. 19, 2018) (NDIA Comments).

¹¹ See Association for Community Affiliated Plans, Blue Cross Blue Shield Association, and Medicaid Health Plans of America Comments, WC Docket No. 17-287 et al., at 1 (Feb. 13, 2018); UPMC Health Plan Comments et al., WC Docket No. 17-287 et al., at 3 (Feb. 21, 2018).

¹² See Randolph J. May, President, The Free State Foundation Comments, WC Docket No. 17-287 et al., at 4-5 (Feb. 21, 2018); Citizens Against Government Waste Comments, WC Docket No. 17-287 et al., at 9 (Jan. 24, 2018).

¹³ See Cities of Boston, Massachusetts, Los Angeles, California, and Portland, Oregon and the Texas Coalition of Cities for Utilities Comments, WC Docket No. 17-287 et al., at 13 (Feb. 21, 2018).

¹⁴ See Florida Public Service Commission Comments, WC Docket No. 17-287 et al., at 2 (Feb. 21, 2018) (Florida PSC Comments); Indiana Utility Regulatory Commission Comments, WC Docket No. 17-287 et al., at 3 (Jan. 24, 2018); Michigan Public Service Commission, WC Docket No. 17-287 et al., at 5 (Jan. 23, 2018); Minnesota Department of Commerce and Minnesota Public Utilities Commission Comments, WC Docket No. 17-287 et al., at 5 (Jan. 24, 2018) (Minnesota PUC Comments); Oregon Citizens' Utility Board Comments, WC Docket No. 17-287 et al., at 2 (Jan. 30, 2018); Public Utility Commission of Ohio Comments, WC Docket No. 17-287 et al., at 3 (Feb. 21, 2018); *see also* National Association of Regulatory Utility Commissioners Comments, WC Docket No. 17-287 et al., at 22 (Feb. 21, 2018).

groups,¹⁵ children advocates,¹⁶ tribal groups,¹⁷ think tanks,¹⁸ the wireless industry,¹⁹ Internet companies,²⁰ broadband providers,²¹ and Lifeline providers²² *all* oppose the elimination of non-facilities based providers from the Lifeline program.²³

NHMC agrees that the “elimination of resellers from the Lifeline program would significantly alter the current Lifeline marketplace”²⁴ and “would be disruptive to current and potential Lifeline customers.”²⁵ Additionally, the record is devoid of any analysis to support the Commission’s assumption that eliminating non-facilities based providers would lead to deployment of broadband capable networks. Indeed, “the proposed elimination of resellers from the Lifeline program would not materially further the deployment of broadband infrastructure, because revenue from resellers already contributes to facilities-based carriers’ deployment of

¹⁵ See Korean War Veterans Association Comments, WC Docket No. 17-287 et al., at 2 (Feb. 17, 2018); National Association of American Veterans Comments, WC Docket No. 17-287 et al., at 2 (Feb. 21, 2018) (NAAV Comments).

¹⁶ See Common Sense Kids Action Comments, WC Docket No. 17-287 et al., at 12 (Feb. 21, 2018) (Common Sense Kids Comments).

¹⁷ See National Tribal Telecommunications Association, WC Docket No. 17-287 et al., at 5-6 (Feb. 21, 2018) (recommending that the Commission allow wireless resellers to offer Lifeline service to Tribal areas under certain conditions); Oceti Sakowin Tribal Utility Authority Comments, WC Docket No. 17-287 et al., at 7 (Feb. 15, 2018).

¹⁸ See Information Technology and Innovation Foundation Comments, WC Docket No. 17-287 et al., at 4 (Feb. 21, 2018).

¹⁹ See CTIA Comments, WC Docket No. 17-287 et al., at 11 (Feb. 21, 2018) (CTIA Comments); Sprint Corporation Comments, WC Docket No. 17-287 et al., at 17 (Feb. 21, 2018) (Sprint Comments); Verizon Comments, WC Docket No. 17-287 et al., at 8 (Feb. 21, 2018).

²⁰ See INCOMPAS Comments, WC Docket No. 17-287 et al., at 4-7 (Feb. 21, 2018).

²¹ See ITTA – The Voice of America’s Broadband Providers, WC Docket No. 17-287 et al., at 3 (Feb. 21, 2018); United States Telecom Association Comments, WC Docket No. 17-287 et al., at 2 (Feb. 21, 2018) (USTelecom Comments).

²² See Applied Research Designs, Inc. Comments, WC Docket No. 17-287 et al., at 6 (Feb. 21, 2018) (AR Designs Comments); National Lifeline Association Comments, WC Docket No. 17-287 et al., at 30-43 (Feb. 21, 2018).

²³ *But see* NTCH, Inc. Comments, WC Docket No. 17-287 et al. (Jan. 24, 2018) attaching Petition to Rescind Forbearance (Aug. 8, 2012) (requesting enforcement of the facilities-only rule).

²⁴ Sprint Comments at 17.

²⁵ *Id.*

broadband facilities, but could harm customers that currently rely on resellers' services."²⁶

Although members of the wireless industry support the goal of incentivizing broadband deployment, they acknowledge that the "proposal to limit Lifeline support to facilities-based carriers would be *counterproductive* to this goal."²⁷ NHMC agrees with the overwhelming majority of commenters that choice, competition, and innovative offerings will suffer if non-facilities based providers are removed from the Lifeline program.²⁸

Additionally, many commenters oppose the outright elimination of the Lifeline Broadband Provider ("LBP") category of ETC.²⁹ As NCLC, on behalf of its low-income clients notes, "[a] national LBP designation does not infringe upon states' rights and traditional areas of authority."³⁰ NHMC concurs that the proposal to revoke the LPB designation process and eliminate a "streamlined entry point"³¹ is also especially counterproductive when coupled with the Commission's proposal to remove non-facilities based providers from the program.

These two proposals, in particular, undermine the Commission's promise and ability to provide subsidized broadband opportunities for eligible Lifeline subscribers. In order to incentivize provider participation and increase innovation, choice, and competition in the Lifeline

²⁶ USTelecom Comments at 2.

²⁷ See CTIA Comments at 13 (emphasis added).

²⁸ See, e.g., NCLC Comments at 6 ("[t]he elimination of non-facilities-based providers will leave large portions of the country without consumer choice in Lifeline providers and could result in no Lifeline coverage for some parts of the country."); Rainbow PUSH Comments at 3 ("[m]ost of the innovations in Lifeline service offerings are attributed to wireless resellers, removal of these providers from the Lifeline market, not only limits consumer choice, but also would limit innovation in the Lifeline marketplace.").

²⁹ See, e.g., AR Designs Comments at 6; NDIA Comments at 2. *But see* California Public Utilities Commission, WC Docket No.17-287 et al., at 6 (Feb. 21, 2018) ("[s]tates should have the primary responsibility of reviewing and granting requests for ETC designation primarily because states are better suited to determine whether a local carrier has met the ETC service and facilities requirements.").

³⁰ NCLC Comments at 19.

³¹ *Id.*

program, the Commission must allow non-facilities based providers to continue to participate in the program and cease any efforts to revoke the LBP designation process.

II. RATIONING LIFELINE DISPROPORTIONATELY HARMS LOW-INCOME CONSUMERS AND ERECTS UNNECESSARY BARRIERS FOR PROVIDERS

NHMC is joined by the majority of commenters in strongly objecting to the Commission's proposals to adopt a self-enforcing budget cap, add a maximum discount level, and impose a lifetime benefit limit. Separately, these proposals undermine the Lifeline program and question the integrity of its low-income consumers. Taken together, they are even more troubling. Not only would these proposals exclude millions of eligible families from receiving a much-needed Lifeline subsidy, they would also be disruptive to providers³² and ultimately eviscerate the program. As NAACP explains, "[r]ationing Lifeline hurts low-income Americans and hurts our nation...[it] is contrary to the intent of Universal Service and limits the ability of the program to help connect the poor to communications service."³³ Indeed, Lifeline was always intended to help provide low-income individuals with access to affordable communications. Noticeably absent from the record is support for the Commission's proposal to fundamentally alter the purpose of Lifeline from a program that helps low-income individuals access vital communications services, to one that "help[s] encourage the deployment of facilities-based networks by making deployment of the networks more economically viable."³⁴

³² See generally USTelecom Comments at 8 (opposing the proposal to administer a self-enforcing budget cap, "[w]hile the Commission's goal of keeping disbursements at a responsible level and preventing undue burdens on ratepayers is laudable, a self-enforcing budget mechanism could be disruptive to consumers and providers."); Common Sense Kids Comments at 10 ("a hard cap budget will create unpredictability for providers—providing certainty only that there will never be more money in the program—leading them to flee.").

³³ NAACP Comments at 2; see also NAAV Comments at 3 ("[r]ationing Lifeline benefits and limiting service providers will harm our nation's veterans and military families.").

³⁴ *Lifeline NPRM* at para. 62.

Given the overwhelming opposition to and resulting harms of imposing a self-enforcing budget cap, the Commission must abandon its proposal. Pointedly, MMTC states, “[i]n almost every possible scenario in which a hard, annual cap could be implemented by the Commission, low-income minorities and other vulnerable segments of society are losers.”³⁵ NHMC concurs with AAJC’s assessment that a budget cap would add complexity to the administrative process and “could increase the administrative cost to perform burdensome tasks such as the recalculation of benefit amounts, operationalizing the rules that prioritize the benefit, monitoring and creating waiting lists, and establishing geographical priorities.”³⁶ The Rainbow PUSH Coalition further explains the harms to communities of color, “[g]iven that there is a much larger Hispanic and black population that is smartphone-dependent than the white population...any budget cap for phone service would interfere with the everyday needs of low-income Americans.”³⁷

Imposing a maximum discount level, also described as “co-pay” for Lifeline service, would create a cost increase that low-income families simply cannot afford. NHMC joins commenters in acknowledging that the proposal is “antithetical to the mission of the Lifeline program”³⁸ and recommends that the Commission abandon its proposal to implement a mandatory co-pay as a “rational, targeted, or effective means of achieving additional program integrity measures.”³⁹ There is simply no evidence to suggest that “Lifeline customers do not grasp the value of Lifeline service or the fact that they are receiving Lifeline service.”⁴⁰ Lifeline was always

³⁵ MMTC Comments at 15.

³⁶ AAJC Comments at 3; *see also* NCLC Comments at 13 (“[t]he imposition of a cap will result in loss of Lifeline providers, loss of Lifeline consumers, and increase Lifeline administration costs.”).

³⁷ Rainbow PUSH Comments at 2.

³⁸ CWA Comments at 4.

³⁹ NCLC Comments at 17.

⁴⁰ Sprint Comments at 10. *But see* Missouri Public Service Commission Comments, WC Docket No. 17-287 et al., at 11 (Jan. 23, 2018) (“it’s unclear whether a customer truly wants and values a service if they do not have to pay for it.”).

intended as a program to make vital communications services affordable, and not as a program that forces individuals to “choose between their link to the outside world and other basic necessities.”⁴¹

The lifetime benefit limit is another proposal that fails to consider “those whose incomes are fixed permanently, such as some people with disabilities and seniors,”⁴² and is “*pointless* for both the customer and the company.”⁴³ NHMC agrees that the lifetime benefit limit is another way for the Commission to “arbitrarily limit universal access to telecommunication and broadband services.”⁴⁴ Administration of this proposed change would be overly burdensome and “would unnecessarily complicate the program in light of the FCC’s own data that most households remain enrolled for under two years.”⁴⁵ Again, the record reveals that the overwhelming majority of commenters agree with NHMC’s analysis that the Commission’s proposals will erect barriers to connectivity, destabilize the program, and disproportionately impact low-income consumers.

III. THE COMMISSION’S PROPOSED CHANGES TO LIFELINE WOULD EXACERBATE THE DEVASTATING IMPACT OF THE 2017 HURRICANE SEASON BY CUTTING OFF VITAL COMMUNICATIONS SERVICES

NHMC and other commenters agree that the Commission must take into account the impact that proposed changes to the Lifeline program would have on victims of recent natural disasters. The 2017 Atlantic hurricane season was “extraordinary by any standard, with a total of 17 named storms, including 10 hurricanes--six of which were classified as major storms,

⁴¹ NAACP Comments at 2.

⁴² Free Press Comments at 61.

⁴³ Minnesota PUC Comments at 12 (emphasis added).

⁴⁴ Pennsylvania Comments at 4.

⁴⁵ See Florida PSC Comments at 8.

measuring Category 3-5 on the Saffir-Simpson Wind Scale.”⁴⁶ It was “one of the most devastating Atlantic hurricane seasons of all times”⁴⁷ and “a top-10 hurricane season by most metrics.”⁴⁸ The almost total loss of communications in Puerto Rico following Hurricane Maria further illustrates how robust and resilient communications networks are especially critical to public safety and emergency services during and following natural disasters. Lifeline helps meet this public safety need by keeping poor and marginalized communities connected.

The proposals to remove non-facilities based providers, create a self-enforcing budget cap, and require a co-pay, would not only result in far-reaching consequences for Lifeline subscribers living in areas impacted by natural disasters, it would severely hamper disaster recovery efforts. As Common Sense Kids Action notes, “[i]n times of disaster, program need and eligibility will understandably increase for a time. But with...no requirement for the Commission to re-assess even in times of urgent national need, those families in crisis will be cut off.”⁴⁹ For example, Puerto Rico has 506,025 households subscribed to Lifeline, a 60 percent participation rate based on the eligible population.⁵⁰ If the Commission were to implement its ill-advised proposals, the result would disconnect 379,519 Lifeline households in Puerto Rico.⁵¹ Being disconnected creates

⁴⁶ Philip J. Klotzbach, PhD, *2017 Atlantic Hurricane Season in Review: One for the Record Books*, (Nov. 30, 2017), <http://www.iii.org/insuranceindustryblog/?p=5628>.

⁴⁷ *Id.*

⁴⁸ Kevin Loria, *The 'extremely active' 2017 hurricane season is finally over — here are the insane records it set*, (Nov. 30, 2017), <http://www.businessinsider.com/atlantic-hurricane-season-records-2017-11>.

⁴⁹ See Common Sense Kids Comments at 9-10; see also Consumer Action Comments at 3 (“[t]hese products work best for the most economically fragile subscribers—homeless veterans, domestic violence victims, and *victims of natural disasters*—because they do not require a credit check, deposit, late fees, or a checking account or some other way to make a monthly payment.”) (emphasis added).

⁵⁰ See USAC Eligible Lifeline Population Statistics, <http://www.usac.org/li/about/process-overview/program-stats.aspx> (last visited Mar. 23, 2018).

⁵¹ See National Consumer Law Center, *A Lifeline that Breaks Down Barriers to Affordable Communications, Puerto Rico* (last visited Mar. 23, 2018), <https://www.nclc.org/images/pdf/take-action/lifeline/fact-sheets/PR-LL.pdf> (illustrating that 75 percent of Lifeline subscribers in Puerto

additional, and sometimes insurmountable, obstacles for hurricane victims who are both struggling to rebuild and simultaneously bracing themselves for the 2018 hurricane season. Accordingly, the Commission must abandon any proposals that would disconnect and further harm victims of the 2017 hurricane season.

CONCLUSION

The record overwhelmingly supports NHMC's recommendation that the Commission abandon proposals that would hurt poor and marginalized communities and further widen the digital divide. NHMC joins commenters in opposing the Commission's proposals that destabilize Lifeline under the pretext of encouraging network deployment. NHMC respectfully recommends that the Commission focus on implementing the *2016 Lifeline Modernization Order* and continue working to ensure that all eligible Lifeline subscribers can get and stay connected to vital communication services.

Respectfully Submitted,

/s/ _____
Carmen Scurato, Esq.
Francella Ochillo, Esq.
Maria Gloria Tristani
National Hispanic Media Coalition
65 South Grand Avenue
Suite 200
Pasadena, CA 91105
(626) 792-6462

March 23, 2018

Rico would be disconnected from service if the Commission's proposal to remove non-facilities based providers is implemented).